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8 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 WELLS FARGO N.A., successor-in-  
11 interest to WACHOVIA SBA  
12 LENDING, INC., doing business as  
Wachovia Small Business Capital,

13 Plaintiff,

14 v.

15 DONALD CHILL, individually and on  
16 behalf of the marital community,

17 Defendant.

CASE NO. 10-cv-05348 JRC

ORDER RENOTING  
PLAINTIFF'S MOTION FOR  
PARTIAL SUMMARY  
JUDGMENT

18 This Court has jurisdiction pursuant to 28 U.S.C. § 636(c), Fed. R. Civ. P. 73 and  
19 Local Magistrate Judge Rule MJR 13 (see also Joint Status Report, ECF No. 9; Order on  
20 Consent to Proceed Before a United States Magistrate Judge, ECF No. 10).

21 This matter has come before the Court on plaintiff's Motion for Partial Summary  
22 Judgment (ECF No. 23). The Court notes that defendant is incarcerated and is  
23 representing himself *pro se*. In similar circumstances, the Ninth Circuit has required that  
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1 a *pro se* prisoner be given special notice before the court grants summary judgment  
2 against him or her. See Rand v. Rowland, 113 F.3d 1520 (9th Cir. 1997). The Ninth  
3 Circuit has ruled that this notice applies not only in Section 1983 cases but other civil  
4 cases that impact *pro se* prisoners. See S.E.C. v. Nite, 207 F.3d 1134 (9th Cir. 2000).  
5 This special notice is required because of the unique status of prisoners required to handle  
6 complex legal matters without legal representation.

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8 Very recently, the Ninth Circuit held that such notice should be provided  
9 contemporaneously with the summary judgment motion. See Woods v. Carey, 09-15548,  
10 \_\_ F.3d \_\_ (9th Cir. 2012).

11 The record does not reflect that defendant ever received Rand notification. This  
12 order is intended to provide this notification.

13 In accordance with Rand and its progeny, defendant is advised that when plaintiff  
14 files a motion for summary judgment pursuant to Federal Rules of Civil Procedure 56,  
15 defendant should review the rule for purposes of determining a response. Rule 56  
16 requires a nonmoving party (in this case, defendant) to submit affidavits or other  
17 evidence in opposition to the motion for summary judgment if the moving party has  
18 shown the absence of issues of material fact and an entitlement to judgment as a matter of  
19 law. A nonmoving party may not rest upon the mere allegations or denials of prior  
20 pleadings. Rather, successful opposition to a motion for summary judgment requires the  
21 nonmoving party to set forth, through affidavits or other evidence, specific facts showing  
22 a genuine issue for trial. Failure by defendant to oppose this summary judgment motion  
23 or to present counter evidence could result in the Court accepting the moving party's  
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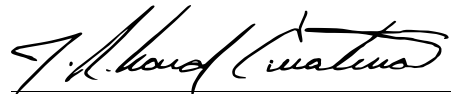
1 evidence as the truth, and entering final judgment in favor of the moving party without a  
2 full trial. Rand v. Rowland, 113 F.3d 1520 (9th Cir. 1997).

3 Plaintiff's Motion for Partial Summary Judgment is renoted for August 10, 2012.  
4 The Court will consider anything defendant wishes to submit in response to plaintiff's  
5 Motion for Partial Summary Judgment, so long as defendant files such response by  
6 August 6, 2012. Any reply by plaintiff must be filed by August 10, 2012.

7 The parties are advised that all other deadlines set forth in the Court's Scheduling  
8 Order (ECF No. 18) remain in effect.

9 The clerk is directed to send a copy of this order to all parties and renote plaintiff's  
10 Motion for Partial Summary Judgment to August 10, 2012.

11 Dated this 13th day of July, 2012.

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14 J. Richard Creatura  
15 United States Magistrate Judge  
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